

to eliminate what is currently an “uneven” playing field, and ensure that artificial regulatory distinctions do not thwart Congress’s overriding objective of promoting competition.

1. *Preemption of Local Tower Siting Restrictions*

As noted above, Section 253(a) of the Communications Act of 1934, as amended by the 1996 Act provides that no local government requirement “may *prohibit or have the effect of prohibiting* the ability of any entity to provide any interstate or intrastate telecommunications service.” Undue restrictions on the siting of local wireless broadband service facilities clearly prohibit or have the effect of prohibiting fixed wireless broadband providers from offering telecommunications service in a particular geographic market, and thus by their terms contravene Section 253(a).^{53/} Accordingly, preemption of such undue restrictions in the fixed wireless broadband context is required by statute and consistent with the Commission’s Section 253 precedents.^{54/}

^{53/} It is also clear that an open-ended or unduly long siting moratorium cannot be afforded the protection of Section 253(b), which provides that nothing in Section 253 “shall affect the ability of a State to impose, on a competitively neutral basis . . . , requirements necessary to . . . protect the public safety and welfare” 47 U.S.C. § 253(b). Such a moratorium is neither competitively neutral nor “necessary” to serve the legitimate local government objectives enumerated in Section 253(b). First, *any* moratorium gives a competitive edge to incumbent “carriers already serving the market by enabling them to use their “time to market” advantage. Assuming *arguendo* that traditional zoning concerns such as aesthetics and public safety constitute actions to “protect the public safety and welfare,” the Commission has appropriately construed “necessary” under Section 253(b) very narrowly. See *New England Public Communications Council* ¶¶ 19-25, *Reconsideration MO&O* ¶ 7.

^{54/} See *California Payphone Ass’n, Memorandum Opinion and Order*, CCB Pol. 96-26, FCC 97-251, ¶¶ 27-42, n.96 (rel. July 17, 1997); *New England Pub. Communications Council, Memorandum Opinion and Order*, CCB Pol. 96-11, FCC 96-470, ¶¶ 17-25 (1996), *aff’d on recon.*, *Memorandum Opinion and Order*, FCC 97-143 (released April 18, 1997); *Classic Tel., Inc., Memorandum Opinion and Order*, 11 FCC Rcd. 13082, 13091-102 (1996).

Moreover, Section 332(c)(7)(B)(i)(II) largely mirrors Section 253(a), providing that local zoning regulation “*shall not prohibit or have the effect of prohibiting* the provision of personal wireless services.” At least two courts have already deemed CMRS tower siting moratoria to be a prohibition or effective prohibition on provision of CMRS service.^{55/} Furthermore, prohibitions on service provision far more subtle and less extensive than a siting moratorium have been deemed to contravene Section 332(c)(7). For example, local regulation which has the effect of prohibiting service in a particular area within a locality, such as a subdivision or highway corridor, has been deemed to effectively prohibit service provision in violation of the Act.^{56/} Even local regulation which prohibits the construction of a single cell site resulting in a “dead zone” in the licensee’s service area may be an effective prohibition on service prohibition.^{57/}

Since unlawful local tower siting restrictions have the same prohibitive effect on service regardless of whether the provider is “CMRS” or “fixed,” WCA submits that there is no reason

^{55/} See *Sprint Spectrum, L.P. v. Jefferson Co.*, Civ. Act. No. CV-97-8-1424-8, Slip. Op. at 20 (N.D. Ala. entered July 31, 1997); *Sprint Spectrum, L.P. v. West Seneca*, 1997 N.Y. Misc. LEXIS 43, *5 (N.Y. Sup. Erie Co. Feb. 25, 1997).

^{56/} *Western PCS II Corp. v. Extraterritorial Zoning Auth. of Santa Fe*, 957 F. Supp. 1230, 1238 (D.N.M. 1997) (denial of siting request had effect of denying service to particular subdivision and interstate highway corridor); see also *Illinois RSA No. 3, Inc. v. County of Peoria*, No. 96-3248, 1997 U.S. Dist. LEXIS 5933, *30 (C. D. Ill. 1997) (stating in dicta that “had the County decided to be inflexible and totally forbid cellular facilities *in certain areas of the County*, it might have” violated the Act’s requirement that local regulation not effectively prohibit service provision (emphasis added)).

^{57/} See *United States Cellular Corporation v. Board of Adjustment of the City of Des Moines*, No. CL00070195 (Ia. Dist. Ct. Dec. 31, 1996).

for the Commission to adopt different preemption schemes for CMRS and fixed wireless broadband providers, or, for that matter, television broadcasters who may soon be providing advanced services as they enter the digital era.^{58/} Accordingly, at a minimum, the Commission should take whatever regulatory actions are necessary to ensure that the benefits of its preemption policies for CMRS providers and television broadcasters remain available to fixed wireless broadband telecommunications service providers, and that one class of providers does not enjoy greater rights to preemptive relief than the other.^{59/}

2. Access to the Customer

a. *Restrictions on Use of Over-The-Air Antennas*

If the Commission truly intends for wireless broadband service providers to meet the needs of the American public for access to high-capacity last mile transmission links, the Commission must assure that local governments and private restrictions do not unduly prevent consumers from installing the antennas necessary to terminate those links at their businesses or

^{58/} See *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*, MM Docket No. 97-182, FCC 97-296 (rel. Aug 19, 1997) (Commission proposes specific preemption criteria for local siting restrictions imposed on digital television facilities).

^{59/} See, e.g., "Chairman William E. Kennard Announces Historic Agreement by Local and State Governments and Wireless Industries on Facilities Siting Issues," FCC News Release No. 84845 (Aug. 5, 1998) (announcing agreement between local authorities, CTIA, PCIA and AMTA on appropriate guidelines for tower siting, and on an informal dispute resolution process for siting issues). It should be noted, however, that even here the Commission did not fully exercise its preemption authority, instead deferring to negotiations between local authorities and wireless providers. Thus, the bartered solution the Commission adopted in the CMRS context ultimately may not permit accelerated deployment of advanced telecommunications capability as intended by Congress.

residences. The record is clear that inappropriate restrictions on antennas have significantly slowed the emergence of wireless video services using MDS/TTFS and Direct Broadcast Satellite (“DBS”). Congress has directed the Commission to preempt those unnecessary local governmental and private restrictions on video antennas. The Commission should now exercise its authority to similarly preempt undue governmental and private restrictions on wireless antennas used for non-video broadband services.

Section 207 of the 1996 Act requires the Commission to “promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive *video programming services* through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast services.”^{60/} As a result, the current regulatory framework for federal preemption of local antenna restrictions may be flawed in at least two critical respects. First, wireless broadband providers may take advantage of the Commission’s preemption rules adopted in response to Section 207 only if they are delivering *video programming services* to the home.^{61/} Second, as implemented by the Commission, the statute’s reference to “multichannel multipoint distribution service” appears to exclude the broad

^{60/} 1996 Act, § 207 (emphasis added).

^{61/} *Preemption of Local Zoning Regulations of Satellite Earth Stations; Implementation of Section 207 of the Telecommunications Act of 1996 — Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, 11 FCC Rcd. 19276 (1996) (the “OTARD Preemption Order”).

range of wireless broadband providers who provide similar services but use frequencies outside the MDS/MMDS and LMDS bands.^{62/}

Section 207's reference to "video programming" services appears to be quite broad and would, for example, encompass video programming "streamed" over the Internet. As defined in the 1984 Cable Act, the term "video programming" includes that which is "generally considered comparable to programming provided by a television station."^{63/} Given that video programming comparable to that provided by broadcast television can now be streamed over the Internet, there does not appear to be any sensible basis for limiting Section 207 protection only to those entities who deliver "video programming" under the traditional broadcast or multichannel models.

Moreover, if interpreted otherwise, Section 207 produces absurd results. For example, PCTV's SpeedChoice Internet access service would be entitled to antenna preemption protection in Phoenix as long as PCTV also offers multichannel video as part of its service package. If, however, a PCTV subscriber ultimately elects to take SpeedChoice only, PCTV could lose preemption protection (and thus the subscriber might lose service altogether) *even though the service is coming from the same antenna via the same microwave signal*. The same result

^{62/} In the *OTARD Preemption Order*, the Commission ruled that by referring to "multichannel multipoint distribution service," Congress did not intend to exclude "closely-related services such as MDS, ITFS and LMDS." *OTARD Preemption Order* at ¶ 30. The Commission's decision did not, however, specifically extend the scope of protected providers to include other types of fixed wireless broadband licensees (e.g., WCS, DEMS, 38 GHz).

^{63/} 47 U.S.C. § 522(20).

obtains where the subscriber elects to switch from a fixed wireless service provider covered by the statute (*e.g.*, LMDS) to a functionally similar provider who is not (*e.g.*, WCS).

In short, the Commission can and should take action now to ensure that wireless broadband service providers do not suffer the same impediments to service that have plagued wireless video service providers. Accordingly, WCA asks that the Commission extend the federal preemption of antenna restrictions contained in Section 1.4000 of the Commission's Rules to all wireless services, regardless of whether they are used to provide a traditional broadcast-like or cable-like service.

b. Inside Wiring

The Commission has asked for comment about the "last hundred feet" for advanced telecommunications capability, which would include wiring inside multiple dwelling units ("MDUs") that is dedicated to providing service to a particular tenant's unit, also known as "home run" wiring.^{64/} More specifically, the Commission asks whether current law or regulation "provide[s] any basis on which to open up access to the last hundred feet in . . . MDUs . . . to ensure that customers have easy access to the choices they want."^{65/} Since access to home run wiring in effect *is* access to the subscriber in the MDU environment, this is an issue which must be resolved if wireless broadband service providers are to have a full and fair opportunity to offer advanced telecommunications capability to as many customers as possible.

^{64/} NOI at ¶ 53.

^{65/} *Id.*

As the Commission is aware, much of the current debate over inside wiring arises from Section 624(i) of the 1992 Cable Act, which requires the Commission to “prescribe rules concerning the disposition, after a subscriber terminates service, of any cable installed by the cable operator within the premises of such subscriber.”⁶⁶ Over the past several years, WCA has participated extensively in various Commission rulemakings associated with Section 624(i), which in turn have produced new rules and policies governing cable “home run” wiring (*i.e.*, the wiring specifically dedicated to providing service to an individual tenant’s unit, running from the cable home wiring demarcation point (twelve inches outside the tenant’s unit) to the junction box). As WCA has noted elsewhere, these new rules and policies represent a critical first step toward achievement of *bona fide* competition between wireless broadband providers and incumbent cable operators.⁶⁷

Nonetheless, WCA believes that the Commission’s “home run” wiring rules still contain fundamental flaws which, if not corrected, will become a permanent obstacle to widespread deployment of advanced telecommunications capability in the MDU environment. First and foremost, it appears that a wireless broadband provider may take advantage of the new rules only

⁶⁶ 47 U.S.C. § 544(i).

⁶⁷ For example, consistent with a proposal put forth by WCA, the Commission will now require an incumbent cable operator to enforce its “legal right to remain” by obtaining a court order or injunction within 45 days of receiving notice that the MDU owner intends to give a competitor access to the building. *Inside Wiring R&O*, 13 FCC Rcd. at 3698. In addition, incumbents must now decide how they want to dispose of their “home run” wiring within a specific period of time after notice of termination from the MDU owner and, more generally, must cooperate with the MDU owner and the competitor so that a seamless transition of service may take place. *Id.* at 3680-89.

if it is offering multichannel video programming. As currently written, the rules do not expressly accord a wireless broadband provider *any* rights to “home run” wiring where it is offering *only* non-video services.^{68/} Simply stated, a wireless broadband provider’s access to inside wiring should not depend upon whether it decides to offer multichannel video as part of its service package – it should only depend on how the resident desires for the wiring devoted to his or her unit to be used. Were the Commission to hold otherwise, it in effect would be requiring wireless broadband providers to design their service offerings to accommodate regulatory idiosyncracies rather than marketplace demand, something the Commission is expressly trying *not* to do in this proceeding.

Moreover, expansion of the inside wiring rules as suggested above would be entirely consistent with the Commission’s broader objective of promoting consumer choice in the market for advanced telecommunications services. The cable inside wiring rules address a fundamental reality of serving MDUs – building owners are often loathe to permit alternative service providers access to their residents unless the wiring that is already installed can be deployed for the new service offerings. Under the approach envisioned by WCA, the resident would determine which service provider is afforded access to the cabling devoted to that particular resident’s MDU. For example, if an MDU resident places a high value on receiving an

^{68/} See, e.g., 47 C.F.R. § 76.804(e) [“Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring . . . to prevent, impede, or in any way interfere with, the ability of an alternative *MVPD* to use the home run wiring pursuant to this section.” [emphasis added]; 47 C.F.R. § 76.804(f) [stating that Commission’s procedures for transfer of home run wiring “shall apply to all *MVPDs*”] [emphasis added].

incumbent cable operator's multichannel video service, but desires non-video offerings from another source, then he or she will require the non-video provider to make whatever arrangements are necessary with the building owner to ensure that its connection to the subscriber's unit allows the subscriber to continue receiving the cable operator's multichannel video service. Alternatively, where the tenant prefers either a package of multichannel video and non-video services or just non-video services from a new wireless broadband provider, the resident should be able to designate the new provider as the user of the wiring. In either case, the Commission should permit the marketplace to determine the final result. Otherwise, the tenant will in effect be held hostage to the cable operator's advanced telecommunications services simply because the Commission's rules allow for no other result, even where the cable operator's service package is provided at a price and/or quality level that may not be desirable.

Also, as set forth in WCA's Petition for Reconsideration with respect to the *Inside Wiring R&O*,^{69/} WCA believes that the Commission's inside wiring rules still do not give MDU owners sufficient certainty as to their rights upon termination of the incumbent's service, and thus will not materially improve competition in the MDU environment unless the Commission adopts WCA's suggested rule modifications. In WCA's view, the heart of the problem is the Commission's failure to recognize that the cost of cable inside wiring lies primarily in installation and not in the wiring itself, and that the salvage value of coaxial cable pales in comparison to the cost of removing the wiring and restoring the premises to their former

^{69/} WCA Petition for Reconsideration re: CS Docket No. 95-184 and MM Docket No. 92-260 (filed Dec. 15, 1997).

condition. Structural limitations, fear of property damage, and related aesthetic considerations often discourage an MDU property owner from allowing multiple providers onto his or her property unless existing wiring can be re-used. Thus the marketplace reality is this: *if MDU owners fear that incumbent cable operators will elect to remove their home run wiring and force a competitor to postwire the premises, the MDU owner often will deny access to competing service providers.*

The "postwiring" problem will continue to burden wireless broadband providers for the foreseeable future as long as incumbents are permitted to remove their wiring before the MDU owner (or, if he or she so designates, the competing provider) has an opportunity to purchase it. Accordingly, WCA has recommended that the Commission adopt a rule stating that if the MDU owner or successor MVPD wishes to purchase the incumbent's home run wiring, it should have the right to do so at a price equal to depreciated value.^{20/} As addressed at length in WCA's earlier filings, this proposal provides the incumbent cable operator with "just compensation," since the wiring amounts to little more than scrap once it is removed from the building.^{21/} Accordingly, WCA's proposal does not raise any Fifth Amendment "takings" issue.

^{20/} See WCA Reply to Oppositions to Petition for Reconsideration, CS Docket No. 95-184 and MM Docket No. 92-260, at 7 (filed Jan. 28, 1998). Conversely, if the MDU owner or the successor MVPD elects not to purchase the incumbent's home run wiring, the incumbent should be free either to remove the wiring and restore the premises to its prior condition, or abandon the wiring. *Id.*

^{21/} See *Second Report and Order* in CC Docket No. 79-105 (Detariffing the Installation and Maintenance of Inside Wiring), FCC 86-63, 51 FR 8498, ¶ 46 (rel. March 12, 1986) [emphasis added].

3. RF Radiation

Under Section 332(c)(7)(B)(iv), localities are not permitted to regulate personal wireless service facilities on the basis of radio frequency emissions “to the extent that such facilities comply with *the Commission’s regulations* concerning such emissions.”^{12/} As mandated by Congress, the Commission has adopted a comprehensive regulatory regime for regulating the environmental effects of RF emissions from such facilities.^{13/} The Commission’s rules are based on the conclusion of expert agencies and the best scientific evidence available. The Commission’s rules also sensibly differentiate between communications facilities more likely and those less likely to impact the human environment by categorically excluding certain facilities from environmental processing requirements.^{14/} Thus, under a plain reading of the statute, if a personal wireless services provider complies with the Commission’s environmental rules, a state or local government should have no jurisdiction over the matter.^{15/}

This should also be the case with respect to fixed wireless broadband providers or, for that matter, any other provider that is subject to the Commission’s RF emission rules. Yet the

^{12/} 47 U.S.C. § 332(c)(7)(B)(iv) (emphasis added).

^{13/} See 47 C.F.R. § 1.1301 et seq., 2.1091; *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, 11 FCC Rcd. 15123 (1996) (“*First R&O*”), amended in part and aff’d in part, *Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, WT Docket No. 97-197, FCC 97-303 (rel. Aug. 25, 1997) (the “*Second MO&O and NPRM*”).

^{14/} *Second MO&O and NPRM* at ¶ 16.

^{15/} But see *Second MO&O and NPRM* at ¶ 115 (soliciting comment on PCIA’s request for clarification as to, *inter alia*, the extent to which States and localities may impose testing and reporting procedures).

Commission has determined that, since it has not received sufficient evidence that local RF regulations have become prevalent outside the context of personal wireless services, it should not preempt local RF regulations that apply to fixed wireless broadband providers.^{76/} Clearly, however, the Commission is not required to postpone preemption until fixed wireless broadband providers are kept out of the marketplace by unlawful local RF restrictions.^{77/} Indeed, given that the objective of this proceeding is to encourage *rapid* deployment of advanced telecommunications capability, it is extremely difficult to see how the Commission's refusal to act serves the public interest. Accordingly, WCA urges the Commission to eliminate any doubt on this matter by stating unequivocally that it will exercise the same preemptive authority on RF issues for *all* wireless providers.

4. Cross-Ownership

The Commission currently applies different cross-ownership standards to fixed wireless broadband providers depending on the frequencies on which they operate, even though those providers will in many cases be providing functionally equivalent services, perhaps even in the same markets. For example, under the cable-MDS cross-ownership rule, a prohibited cross-ownership is created by as little as a 5% or greater voting *or* non-voting stock interest in an MDS or MMDS licensee.^{78/} Moreover, Section 613(b) of the 1992 Cable Act does not allow the cable-

^{76/} *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, 11 FCC Rcd. 15123, 15183 (1996).

^{77/} See *Federal Communications Commission v. WNCN Listeners Guild*, 450 U.S. 582, 594-5 (1980)

^{78/} 47 C.F.R. § 21.912(a).

MDS cross-ownership rule to be waived for good cause.^{79/} As a result, the cable-MDS cross-ownership rule chills potential investment in MDS or MMDS broadband providers by institutional investors or venture capital firms who have already invested in or would like to invest in the cable industry.^{80/}

By contrast, the Commission has adopted far more liberal cross-ownership standards for LMDS: an investor holding an attributable interest in a cable operator is permitted to own up to a 20% interest in a local LMDS licensee in the 28 GHz band, and even that restriction is scheduled to sunset in the year 2000. Moreover, the Commission has decided to adopt *no* cross-ownership restrictions whatsoever for providers in the 38 GHz band. Certainly, given that MDS and MMDS broadband providers will compete directly with 28 and 38 GHz providers for outside investment, the Commission cannot in fairness impose cross-ownership limitations that place MDS/MMDS providers at a disadvantage *vis-a-vis* other fixed wireless broadband competitors.^{81/}

^{79/} 47 U.S.C. § 533(b).

^{80/} See, e.g., Comments of Chase Capital Partners, CS Docket No. 98-82, at 2-8 (filed Aug. 14, 1998) [describing regulatory obstacles Chase encountered in attempting to maintain relatively small simultaneous investments in cable MSO Mediacom and wireless cable operator Wireless One, Inc.; *Letter to Blackstone Management Associates II, L.L.C. from Roy J. Stewart, Chief, Mass Media Bureau (1800E1-AL)* (April 10, 1996) (requiring Blackstone Management Associates to obtain a temporary waiver of the cable/MDS cross-ownership and cable/ITFS cross-leasing rules in order to acquire a limited partnership interest in a joint cable venture with Time Warner and retain its 15% ownership interest in wireless cable operator People's Choice TV Corp.).

^{81/} Indeed, when viewed in this context, it becomes even more apparent that the cable/MDS cross-ownership rule will become even more outdated as wireless cable operators come to depend more heavily on revenue from non-video services. The cable/MDS cross-ownership rule was adopted to prevent cable operators from precluding local multichannel video competition by warehousing MDS spectrum. Obviously, those concerns become less pertinent where to the

Accordingly, the Commission should at least narrow the gap somewhat by applying its proposed broadcast ownership attribution criteria to the cable/MDS cross-ownership rule, so that only voting stock interests of 10% or greater (20% or greater for "passive" investors) would remain attributable.^{82/}

5. Licensing Reform

As a general matter, WCA applauds the Commission's renewed commitment to streamlining its licensing procedures to ensure that new services and technologies are available to the public as quickly as possible.^{83/} Indeed, over the past year the Commission has initiated a series of rulemakings in which it proposes to eliminate application processing requirements that create administrative backlogs that often delay the launch of competitive services for extended periods of time. For example, the Commission has proposed to revise and shorten its mass media application forms and eliminate various rules that place unwarranted filing burdens

extent that wireless cable operators use that same spectrum exclusively for Internet access, high-speed data and other non-video offerings.

^{82/} Comments of WCA re: CS Docket No. 98-82, at 19-22 (filed Aug. 14, 1998). WCA also has asked the Commission to recommend that Congress amend the statutory cable-MDS cross-ownership ban to provide for "good cause" waivers and a rural exemption for any nonurbanized area of fewer than 10,000 persons.

^{83/} See, e.g., Statement of Chairman William E. Kennard Before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, on the Reauthorization of the Federal Communications Commission, 1998 FCC LEXIS 2760, *25 (June 10, 1998) ["[I]t is essential that the FCC look carefully at its rules and internal organization and procedures to ensure that its rules and operations are as streamlined as possible. We must do so to eliminate unnecessary burdens on the industries we regulate and to make sure that the Commission is operating as effectively and efficiently as possible."].

on applicants for new or modified broadcast stations;^{84/} extend first-come first-served processing to AM, noncommercial FM, and FM translator minor change applications;^{85/} consolidate and streamline application procedures and databases for various wireless telecommunications services;^{86/} and simplify the equipment authorization process and deregulate the authorization requirements for certain types of equipment.^{87/}

WCA believes that the Commission must give similar consideration to streamlining its MDS and ITFS licensing procedures, with the ultimate goal of eliminating the lengthy application processing delays that have hampered MDS and ITFS service providers for a number

^{84/} *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules and Processes*, MM Docket No. 98-43, FCC 98-57 (rel. April. 3, 1998).

^{85/} *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, MM Docket No. 98-93, FCC 98-117 (rel. June 15, 1998).

^{86/} *Biennial Regulatory Review -- amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, FCC 98-25 (rel. March 18, 1998).

^{87/} *Report and Order*, ET Docket No. 97-94, FCC 98-58 (rel. April 16, 1998) [the "*Equipment Authorization Report and Order*"].

of years.^{88/} As noted in a recent letter from ATI's Chairman and CEO to Commissioner Powell,

ATI's high speed internet service

will be competing in the marketplace against a host of wireless competitors (such as LMDS, WCS, GWCS, DEMS and 39 GHz) that have the ability to establish service to a given location upon demand, without regulatory delay. Licensees in those services will be able to respond to a prospective customer's request for service immediately; unless ATI can do the same, [its Internet access service] will be a marketplace also-ran. . . . You have called for the end of regulatory compartmentalization under which functionally equivalent offerings are subject to different regulatory structures. Rationalizing the licensing rules for MDS/ITFS with those of LMDS, WCS, GWCS, DEMS 39 GHz and the like would be a good starting point for that crusade.^{89/}

III. CONCLUSION

The passage of the 1996 Act has yielded slow but steady progress toward a fairer, more pro-competitive regulatory environment for wireless services, and WCA looks forward to the Commission's continued efforts in that regard. As discussed above, however, it has become clear that the Congress's vision of providing all Americans with advanced telecommunications

^{88/} Processing delays have been particularly acute with respect to ITFS applications. For example, of the approximately 1000 applications for new or modified ITFS facilities submitted during the October 1995 ITFS filing window, over 60% remain pending. See Reply Comments of BellSouth Corporation and BellSouth Wireless Cable, Inc., MM Docket No. 97-217, at 17 n.50 (filed Feb. 9, 1998). See also Joint Statement of Position of the National ITFS Association, Inc. and The Wireless Cable Association International, Inc. re: MM Docket No. 97-217, at 3 (Feb. 8, 1998) [urging the Commission to "adopt rules providing for the expedited processing and automatic grant of applications to introduce advanced technologies on MDS and ITFS channels"]; Comments of Joint Wireless Cable and ITFS Petitioners, MM Docket No. 97-217, at 15-16 (filed Jan. 8, 1998) [suggesting that unless the Commission makes substantial changes to its application procedures, the resulting backlog will sound a "death knell" for wireless cable and their much needed financial and operational support of local educators].

^{89/} Letter from Robert Hostetler to Commissioner Michael Powell re: MM Docket No. 97-217 and RM-9060 (filed April 9, 1998).

capability will remain unfulfilled absent a substantial reassessment of the Commission's regulatory policies and the historical assumptions that support them. Ultimately, the Congress's objectives will be attained only if that process of reassessment relieves fixed wireless broadband providers of regulatory burdens that block market entry and preclude the competition Congress intended to promote. WCA thus urges the Commission to act ahead of the curve and initiate the actions recommended above.

Respectfully submitted,

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